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5
6 IN THE UNITED STATES BANKRUPTCY COURT
7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

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9 In Re:)
10 MARY JANELLE DITCHING,) No. 17-15012-TWD
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1 filed for relief under Chapter 13 of the U.S. Bankruptcy Code on November 16, 2017
2 under case number 17-15012.

3 1.2 *National Collegiate Student Loan Trust 2005-1*, a Delaware Statutory Trust;
4 *National Collegiate Student Loan Trust 2006-1*, a Delaware Statutory Trust; *National*
5 *Collegiate Student Loan Trust 2007-1*, a Delaware Statutory Trust; *Student Loan*
6 *Solutions, LLC*; *U.S. Department of Education*; and *University of Washington* are the
7 Defendants herein.

8 **II. JURISDICTION AND VENUE**

9 2.1 Jurisdiction in these proceedings is vested in the above entitled court pursuant to
10 28 U.S.C. sections 157, 1334, and 11 U.S.C. section 523(a)(8).

11 2.2 Venue is in the United States Bankruptcy Court for the Western District of
12 Washington at Seattle, Washington, pursuant to 28 U.S.C. 1409.

13 2.3 This proceeding is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(1), relating
14 to the bankruptcy of plaintiff Mary Janelle Ditching, the debtor in Chapter 13 Case No.
15 17-15012, and the determination of the plaintiff's liability on certain student loan debts
16 owed to defendants, and, if liability is determined, the dischargeability of the student
17 loan debt owed to defendants.

19 **III. FACTUAL BACKGROUND**

20 **A. The Background and Nature of the Subject Loans**

21 **1. The National Collegiate Student Loan Trust Loans**

22 **a. Defendant *National Collegiate Student Loan Trust 2005-1*.**

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COMPLAINT - 2

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1 3.1 On December 1, 2004, debtor/plaintiff Mary Janelle Ditching's ("plaintiff")
2 former husband took out the loan currently claimed to be held by defendant **National**
3 **Collegiate Student Loan Trust 2005-1** by forging the names of the plaintiff and the
4 plaintiff's sister (identified as a guarantor of the loan) on the loan documents.

5 3.2 The above referenced loan documents identify the subject Loan Program as the
6 *"Education Maximizer Undergraduate Loan,"* and identify the lender as *"Bank of*
7 *America, N.A."* Repayment of the loan was guaranteed by *The Education Resources*
8 *Institute, Inc.* ("TERI").

9 3.3 TERI was a non-profit guarantor of private student loans. TERI filed a petition for
10 reorganization under Chapter 11 of the U.S. Bankruptcy Code with the United States
11 Bankruptcy Court for the District of Massachusetts on April 7, 2008.

12 3.4 Plaintiff's former husband forged plaintiff and her sister's names and took out the
13 subject loan to obtain money to buy illegal drugs to fuel his drug addiction. Plaintiff's
14 former husband was given the money by the lender without any conditions or
15 restrictions regarding how the money was spent. Plaintiff never received any of the loan
16 proceeds and none of the loan proceeds ever went to benefit plaintiff .

17 3.5 After the loan funds were distributed to plaintiff's former husband, the loan was
18 transferred, sold and assigned to *National Collegiate Funding, LLC*, who, in turn
19 transferred, sold and assigned the subject loan to defendant *National Collegiate Student*
20 *Loan Trust 2005-1* on 2/23/2005 for valuable consideration, in the course of the
21 securitization process for this type of private student loan from a large, for-profit banking
22 institution.

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COMPLAINT - 3

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1 3.6 This loan contains provisions for an initial stated interest rate of 7.163% , a
2 principal amount financed of \$24,849.00, and a term of 240 months (20 years). The loan
3 also contains provisions for a variable rate of interest that only adjusts upwards, and for
4 adding interest that accrues during periods of deferment to the loan principal, for the
5 purpose of accruing future interest on these interest amounts, as well as on the principle
6 amount financed.

7 3.7 The monthly interest and other charges currently accruing on this loan is
8 believed to be approximately \$251.38. Even without any upwards adjustments to the
9 interest rate and without the addition of any "interest upon interest" amounts, the
10 monthly interest accruing on the principle amount financed is \$148.33. The total owing
11 on this loan indicated on the Proof of Claim filed on 12/19/2017 is \$50,032.81.

12 **2. Defendant *National Collegiate Student Loan Trust 2006-1*.**

13 3.8 On December 12, 2005, plaintiff's former husband took out the loan currently
14 claimed to be held by defendant ***National Collegiate Student Loan Trust 2006-1*** by
15 forging the names of the plaintiff and the plaintiff's sister (identified as a guarantor of the
16 loan) on the loan documents.

17 3.9 The loan documents identify the subject Loan Program as the "*Education*
18 *Maximizer Undergraduate Loan*," and identify the lender as "*Bank of America, N.A.*".
19 Repayment of the loan was guaranteed by *The Education Resources Institute, Inc.*
20 ("TERI").

21 3.10 TERI was a non-profit guarantor of private student loans. TERI filed a petition for
22 reorganization under Chapter 11 of the U.S. Bankruptcy Code with the United States
23 Bankruptcy Court for the District of Massachusetts on April 7, 2008.
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1 3.11 Plaintiff's former husband forged plaintiff and her sister's names and took out the
2 subject loan to obtain money to buy illegal drugs to fuel his drug addiction. Plaintiff's
3 former husband was given the money by the lender without any conditions or
4 restrictions regarding how the money was spent. Plaintiff never received any of the loan
5 proceeds and none of the loan proceeds ever went to benefit plaintiff .

6 3.12 After the loan funds were distributed to plaintiff's former husband, the loan was
7 transferred, sold and assigned to *National Collegiate Funding, LLC*, who, in turn
8 transferred, sold and assigned the subject loan to defendant *National Collegiate Student*
9 *Loan Trust 2006-1* on 3/09/2006 for valuable consideration, in the course of the
10 securitization process for this type of private student loan from a large, for-profit banking
11 institution.

12 3.13 This loan contains provisions for an initial stated interest rate of 9.124% , a
13 principal amount financed of \$28,450.00, and a term of 240 months (20 years). The loan
14 also contains provisions for a variable rate of interest that only adjusts upwards, and for
15 adding interest that accrues during periods of deferment to the loan principal, for the
16 purpose of accruing future interest on these interest amounts, as well as on the principle
17 amount financed.

19 3.14 The monthly interest and other charges currently accruing on this loan is
20 believed to be approximately \$309.61. Even without any upwards adjustments to the
21 interest rate and without the addition of any "interest upon interest" amounts, the
22 monthly interest accruing on the principle amount financed is \$216.31. The total owing
23 on this loan indicated on the Proof of Claim filed on 12/19/2017 is \$61,637.71.

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3. Defendant *National Collegiate Student Loan Trust 2007-1*.

3.15 On December 11, 2006, plaintiff's former husband took out the loan currently claimed to be held by ***National Collegiate Student Loan Trust 2007-1*** by forging the names of the plaintiff and the plaintiff's sister (identified as a guarantor of the loan) on the loan documents.

3.16 The loan documents identify the subject Loan Program as the "*Education Maximizer Undergraduate Loan*," and identify the lender as "*Bank of America, N.A.*". Repayment of the loan was guaranteed by *The Education Resources Institute, Inc.* ("TERI").

3.17 TERI was a non-profit guarantor of private student loans. TERI filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Massachusetts on April 7, 2008.

3.18 Plaintiff's former husband forged plaintiff and her sister's names and took out the subject loan to obtain money to buy illegal drugs to fuel his drug addiction. Plaintiff's former husband was given the money by the lender without any conditions or restrictions regarding how the money was spent. Plaintiff never received any of the loan proceeds and none of the loan proceeds ever went to benefit plaintiff.

3.19 After the loan funds were distributed to plaintiff's former husband, the loan was transferred, sold and assigned to *National Collegiate Funding, LLC*, who, in turn transferred, sold and assigned the subject loan to defendant *National Collegiate Student Loan Trust 2007-1* on 3/08/2007 for valuable consideration, in the course of the securitization process for this type of private student loan from a large, for-profit banking institution.

1 3.20 This loan contains provisions for an initial stated interest rate of 9.963%, a
2 principal amount financed of \$28,450.00, and a term of 240 months (20 years). The loan
3 also contains provisions for a variable rate of interest that only adjusts upwards, and for
4 adding interest that accrues during periods of deferment to the loan principal, for the
5 purpose of accruing future interest on these interest amounts, as well as on the principle
6 amount financed.

7 3.21 The monthly interest and other charges currently accruing on this loan is
8 believed to be approximately \$231.15. Even without any upwards adjustments to the
9 interest rate and without the addition of any "interest upon interest" amounts, the
10 monthly interest accruing on the principle amount financed is \$236.21. The total owing
11 on this loan indicated on the Proof of Claim filed on 12/19/2017 is \$50,782.00.

12 3.22 With regards to each of the afore stated loans held by defendants *National*
13 *Collegiate Student Loan Trust 2005-1, National Collegiate Student Loan Trust 2006-1*
14 *and National Collegiate Student Loan Trust 2007-1*, the plaintiff did not take out the
15 subject loans, received no benefit or consideration from the subject loans, and is not
16 contractually or otherwise liable on the subject loans.

18 **2. The Student Loan Solutions, LLC Private Student Loan.**

19 3.23 On December 20, 2007, plaintiff's former husband took out the loan currently
20 claimed to be held by *Student Loan Solutions, LLC* by forging the names of the plaintiff
21 and the plaintiff's sister (identified as a guarantor of the loan) on the loan documents.

22 A proof of claim for this loan has been filed in the plaintiff's Chapter 13 case by
23 "*Student Loan Solutions, LLC*."

1 3.24 The loan documents filed with the Proof of Claim identify the subject Loan
2 Program as the "*Education Maximizer Undergraduate Loan*," and identify the lender as
3 *"Bank of America, N.A."*. Unlike the *NCSLT* loans, there is no reference in the loan
4 documents to this loan being guaranteed for payment by TERI or any other non-profit
5 entity.

6 3.25 Plaintiff's former husband forged plaintiff and her sister's names and took out the
7 subject loan to obtain money to buy illegal drugs to fuel his drug addiction. Plaintiff's
8 former husband was given the money by the lender without any conditions or
9 restrictions regarding how the money was spent. Plaintiff never received any of the loan
10 proceeds and none of the loan proceeds ever went to benefit plaintiff .

11 3.26 According to the Proof of claim, at some point the loan was transferred, sold and
12 assigned from *Bank of America* to *Student Loan Solutions, LLC*.

13 3.27 This loan contains provisions for an initial stated interest rate of 9.862%, a
14 principal amount financed of \$28,000.00, and a term of 240 months (20 years). The loan
15 also contains provisions for a variable rate of interest that only adjusts upwards.

16 3.28 The monthly interest and other charges currently accruing on this loan without
17 any upwards adjustments to the initial stated interest rate and without the addition of any
18 "interest upon interest" amounts is \$230.11. The total owing on this loan indicated on the
19 Proof of Claim filed on 1/30/2018 is \$36,396.00.

20 3.29 With regards to the afore stated loan held by defendant *Student Loan Solutions,*
21 *LLC*, the plaintiff did not take out the subject loan, received no benefit or consideration
22 from the subject loan, and Is not contractually or otherwise liable on the subject loan.

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3. Plaintiff's U.S. Department of Education Federal Student Loans

3.30 Between January 3, 2006 and June 23, 2012, the plaintiff took out several student loans. The *U.S. Department of Education* ("DOE") has filed four separate Proofs of Claim for these loans, claims numbers 7-1, 8-1, 9-1, and 10-1. These loans were "made, insured, or guaranteed by a governmental unit..." for purposes of 11 U.S.C. § 523 (a)(8)(A).

3.31 The original amount of the loan referenced by DOE **Proof of Claim no. 7-1** was \$15,178.00. The total amount of the claim as of the date of 11/16/2017, the filing date of plaintiff's Chapter 13 case, is \$21,854.55. The Proof of Claim does not attach a complete or un-redacted copy of the promissory note for the loan; according to the claimant, the interest rate on this loan is 6.80%. The monthly interest accruing on the principle amount financed is \$86.01.

3.32 The original amount of the loan referenced by DOE **Proof of Claim no. 8-1** was \$17,408.00. The total amount of the claim as of the date of 11/16/2017, the filing date of plaintiff's Chapter 13 case, is \$27,719.00. The Proof of Claim does not attach a complete or un-redacted copy of the promissory note for the loan; according to the claimant, the interest rate on this loan is 6.80%. The monthly interest accruing on the principle amount financed is \$98.65.

3.33 The original amount of the loan referenced by DOE **Proof of Claim no. 9-1** was \$6,912.39. The total amount of the claim as of the date of 11/16/2017, the filing date of plaintiff's Chapter 13 case, is \$8,862.33. The Proof of Claim does not attach a complete or un-redacted copy of the promissory note for the loan; according to the claimant, the

1 interest rate on this loan is 4.50%. The monthly interest accruing on the principle amount
2 financed is \$25.92.

3 3.34 The original amount of the loan referenced by DOE **Proof of Claim no. 10-1** was
4 \$3,694.00. The total amount of the claim as of the date of 11/16/2017, the filing date of
5 plaintiff's Chapter 13 case, is \$4,173.78. The Proof of Claim does not attach a complete
6 or un-redacted copy of the promissory note for the loan; according to the claimant, the
7 interest rate on this loan is 2.110%. The monthly interest accruing on the principle
8 amount financed is \$6.50.

9 **4. Plaintiff's University of Washington Student Loan.**

10 3.35 On or about April 1, 2011, the plaintiff took out an Unsubsidized Stafford loan
11 in the amount of \$5,897.00 and a Pell Grant in the amount of \$1,850.00 to attend the
12 University of Washington. The *University of Washington* has filed a single Proof of
13 Claim for the amounts owing on these loans/grants, claim number 11-1. These
14 loans/grants were "made, insured, or guaranteed by a governmental unit..." for purposes
15 of 11 U.S.C. § 523 (a)(8)(A).

16 3.36 The original principal amount of the loan referenced by the *University of*
17 *Washington* Proof of Claim no. 11-1 was \$7,747.00. The total amount of the claim as of
18 the date of 11/16/2017, the filing date of plaintiff's Chapter 13 case, is \$14,016.81. The
19 Proof of Claim attaches a copy of a "Federal Perkins Loan Master Promissory Note"
20 indicating an annual interest rate of 5%. The monthly interest accruing on the principle
21 amount financed is \$32.28.

22 **B. Plaintiff's Good Faith Efforts to Repay the Loans**

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3.37 With regards to all of the above referenced student loans, the plaintiff kept in contact with holder/servicer of the loan and asked them for her options with regards to loan repayment, kept them informed of her financial situation, requested deferment and forbearance where available for the loan, and asked for and where available filled out forms for income based repayment plans.

3.38 With regards to the *NCSLT* and *Student Loan Solutions, LLC* loans, plaintiff was at various points in time advised that she had no more deferment or forbearance options, after which time plaintiff made some initial payments on the loans but was financially unable to maintain her payments on the loans.

3.39 With regards to the *U. S. Department of Education* and *University of Washington* loans, plaintiff arranged to commence payments on an income based repayment plan later this year.

B. Plaintiff's Medical Conditions:

3.40 Plaintiff has a history of psychological conditions including depression and post traumatic stress disorder. Plaintiff currently suffers from these conditions and will continue to suffer from them for the foreseeable future.

3.41 Plaintiff's psychological conditions limit her employment and career options and her earning ability.

C. Plaintiff's Financial Circumstances and Earning Ability

3.42 The plaintiff is 35 years old, (date of birth 9/09/1982). She was never able to obtain her college degree, in part due to financial pressure from the *NCSLT* and *Student Loan Solutions, LLC* creditors to make loan repayments while she was still in school,

1 causing plaintiff to quit school to search for a full time job to earn sufficient income to
2 allow for loan repayment.

3 3.43 Despite the lack of a college degree, and despite her medical conditions, the
4 plaintiff has been employed by Swedish Medical Center as a Program Coordinator for the
5 last five years. She is a below median income debtor whose income/expense schedules
6 indicate a disposable monthly income of \$411.82, without allowing for any monthly
7 payment on her student loan indebtedness.

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9 **IV. THE SUBJECT NCSLT AND STUDENT LOAN SOLUTIONS, LLC**
10 **STUDENT LOANS DO NOT FALL UNDER THE EXCEPTION TO**
11 **DISCHARGE PROVIDED BY 11 U.S.C. § 523(a)(8).**

12 4.1 Plaintiff restates and incorporates by reference the allegations of paragraphs 1.1
13 through 3.43 above.

14 4.2 The subject *NCSLT* loans and the *Student Loans Solutions, LLC* loan were made
15 by *Bank of America*, a for-profit banking institution, under *Bank of America's Education*
16 *Maximizer Undergraduate Loan Program*, a for-profit program that, in the case of the
17 NCSLT loans, was set up to securitize and sell the subject student loans immediately
18 upon execution.

19 4.3 Upon information and belief, the non-profit institution TERI was paid a set fee
20 for acting as "guarantor" of the *NCSLT* loans. TERI filed a petition for reorganization
21 under Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court
22 for the District of Massachusetts on April 7, 2008 . Upon information and belief, TERI
23 never paid anything to any entity with regards to any of the subject private student loans
24 or with regards to *Bank of America's Education Maximizer Undergraduate Loan*

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*Program, and TERI never "funded " the **Bank of America Education Maximizer Undergraduate Loan Program** in whole or in part.*

4.4 From the Proof of claim documentation filed with the court, and upon information and belief, neither TERI nor any other non-profit guarantor was involved with the *Bank of America* loan acquired by *Student Loans Solutions, LLC*.

4.4 The debtor never received any funds from any of the subject student loans, as an educational benefit, scholarship, or stipend.

4.5 None of the *NCSLT* loans or the *Student Loans Solutions, LLC* loan are "qualified education loans" as defined in section 221(d)(1) of the Internal Revenue Code of 1986.

4.6 The *NCSLT* loans and the *Student Loans Solutions, LLC* loan do not meet the requirements of 11 U.S.C. § 523(a)(8) for exception to discharge.

**V. EXCEPTING THE STUDENT LOAN DEBTS FROM
DISCHARGE WOULD IMPOSE AN UNDUE HARDSHIP ON THE
DEBTOR UNDER 11 U.S.C. § 523 (a)(8).**

5.1 Plaintiff restates and incorporates by reference the allegations of paragraphs 1.1 through 4.6 above.

5.2 The amounts claimed owing at the time of the filing of the plaintiff's Chapter 13 petition on all of the student loans evidenced by Proofs of Claim, with accrued interest and other charges was **\$254,868.91** (\$43,496.96 - *National Collegiate Student Loan Trust 2005-1*), (\$53,585.87 - *National Collegiate Student Loan Trust 2006-1*), (\$44,772.05 - *National Collegiate Student Loan Trust 2007-1*), (\$36,396.75 - *Student Loans Solutions, LLC*) (\$21,854.55 - *DOE Claim 7-1*), (\$27,719.81 - *DOE Claim 8-1*), (\$8,862.33 - *DOE Claim 9-1*), and (\$4,173.78 - *DOE Claim 10-1*) (\$14,016.81 - University of Washington).

5.3 The accruing monthly interest alone on all of the student loans evidenced by Proofs of Claim is at least **\$1,079.32** (\$148.33 - *National Collegiate Student Loan Trust 2005-1*), (\$216.31- *National Collegiate Student Loan Trust 2006-1*), (\$236.21 - *National Collegiate Student Loan Trust 2007-1*), (\$230.11 - *Student Loans Solutions, LLC*) (\$86.01 - *DOE Claim 7-1*), (\$98.65 - *DOE Claim 8-1*), (\$25.92- *DOE Claim 9-1*), (\$6.50 - *DOE Claim 10-1*) and (\$32.28 - *University of Washington*).

5.4 Plaintiff is unable to repay the subject student loan debt, interest, and collection fees and costs without undue hardship.

5.5 If the plaintiff is determined to be indebted to the defendants, said indebtedness should be dischargeable under 11 U.S.C. § 523(a)(8) on the grounds that excepting this debt from discharge will impose an undue hardship on the debtor.

VI. REQUEST FOR RELIEF

1. For a judgment determining that the plaintiff Janelle Ditching's debts owing to the *NCST* and *Student Loan Solutions, LLC* defendants are not subject to the exception to discharge provided by 11 U.S.C. § 523(a)(8).

2. Regarding any debts owing to defendants that are determined to be subject to the exception to discharge provided by 11 U.S.C. § 523(a)(8), for a judgment determining that the plaintiff Janelle Ditching's debts owing to defendants are dischargeable under 11 U.S.C. § 523(a)(8) as imposing an undue hardship on the plaintiff.

3.. For such other and further relief as the Court may deem just and equitable.

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3 Respectfully submitted this 24th day of May, 2018.

4 BROADWAY LAW GROUP
5
6 S/ Richard J. Wotipka
7 Richard J. Wotipka, WSBA #12014
Attorney for Plaintiff Janelle Ditching
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COMPLAINT - 15

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